IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 702 OF 2006

Mr. Anupam Gopal Mittal .. ... Appellant.
VS.

Mrs. Mehroo S. Bali . ... Respondent

Mr. Bharat Choudhari i/b. Lekhs Legal for appellant.
Mr. A.K. Abhyankar i/b.
Mulla & Mulla for respondent

CORAM: D. G. KARNIK **J.**

DATE: 29th September 2006

P.C.:

1. Heard counsel for the parties.

2. Admit. By consent the appeal is heard finally forthwith.

3. The appeal is directed against the interlocutory order dated 23rd August 2006 passed by the learned Juge of the City Civil Court rejecting the appellant's motion for interim reliefs.

4. The main grievance of the appellant in this court is that the three documents i.e., (1) Agreement dated 22nd May 1999, (2) letter dated 1st August 1999 and (3) letter dated 28th February 2005, copies of which are filed at pages 65, 69 and

123 respectively in the compilation were not considered by the trial court while construing the application for interim injunction. Learned counsel for the appellant states that the agreement dated 22nd May 1999 and the letter dated 1st August 1999 were produced before the trial court along with the affidavit of Mr. Anupam Mittal dated 21st March 2006 and were very much before the court when he considered the motion. Similarly the letter dated 22nd February 2005 written by the appellant was also on record of the trial court. The trial court however, did not consider the effect of those documents on the rights of the parties whilst considering the application for injunction.

5. I have perused the order 23rd August 2006. These documents are not referred to in the order. The documents obviously are relevant and ought to have been considered by the trial court while deciding the motion. In these circumstances it would be appropriate to remand the matter back to the trial court for hearing it afresh.

6. Accordingly the appeal is allowed and the matter is remanded back to the trial court with a direction to consider all the

documents and evidences which is placed before it while deciding the motion. Needless to say that the trial court would be entitled to give proper weightage to each of the documents taking into consideration the totality of the circumstances and preponderance of evidence before it while deciding the motion.

7. Mr. Abhyankar learned counsel for the respondent submits that those documents are not admissible in evidence. He is free to raise any objections regarding the admissiblity of the documents before the trial court and the trial court would properly consider such objections also.

8. For these reasons the appeal is allowed and the matter is remanded back to the trial court for decision in accordance with the observations made therein.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application No. 950 of 2006
in

A. O. NO. 702 OF 2006

Mr. Anupam Gopal Mittal .. ... Appellant.
VS.

Mrs. Mehroo S. Bali . ... Respondent

Mr. Bharat Choudhari i/b. Lekhs Legal for appellant.
Mr. A.K. Abhyankar i/b.
Mulla & Mulla for respondent

CORAM: D. G. KARNIK **J.**

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In view of the fact that the appeal is disposed of this Civil application does not survive and the same is dismissed. Counsel for the appellant is free to move the trial court for appropriate reliefs.

(D.G. KARNIK J.)